

SENATE JUDICIARY COMMITTEE
Senator Thomas Umberg, Chair
2021-2022 Regular Session

AB 2673 (Irwin)
Version: June 20, 2022
Hearing Date: June 28, 2022
Fiscal: Yes
Urgency: No
AM

SUBJECT

Hospice licensure: moratorium on new licenses

DIGEST

This bill establishes a moratorium on selling or trading a hospice license during the first five years of licensure, as provided, and requires a new applicant for licensure to demonstrate unmet need in the region served. Requires the California Department of Public Health (DPH) to conduct surveys of accredited hospices, and adopt emergency regulations to adopt recommendations of the California State Auditor, as specified. Prohibits the disclosure of the name of any person mentioned in a complaint to a licensee, except as specified.

EXECUTIVE SUMMARY

This bill makes various changes to the regulation and licensure of hospices in the state in response to a recent State Auditor report detailing hospice fraud and providing recommendations to address the issue. The bill limits the disclosure of a public record by prohibiting the substance of a complaint made to DPH provided to the licensee or any copy or record made available to the licensee from disclosing the name of any person mentioned in the complaint, unless the complainant specifically requests otherwise or if it is the name of an employee of DPH conducting an investigation.

This bill was previously analyzed by the Senate Health Committee – where it passed by a vote of 9 to 0 – related to issues regarding establishing a moratorium on selling or trading a hospice license during the first five years of licensure and other requirements and reforms related to hospice licensure in this state. This analysis, however, is limited to the issues within the Committee’s jurisdiction – namely, the limitation on access to public records.

The bill is author sponsored. The bill is supported by California Association for Health Services At Home, California Hospice and Palliative Care Association, and Sharp HealthCare. There is no known opposition.

PROPOSED CHANGES TO THE LAW

Existing law:

- 1) Establishes the Hospice Licensure Act of 1990 (Act) which provides CDPH with the authority to license and regulate hospice agencies. (Health & Safe. Code §1745, et seq.)
 - a) Prohibits a person, political subdivision of the state, or other governmental agency from establishing, conducting, maintaining, or representing itself as a hospice unless a license has been issued, except as specified. Permits multiple locations without a need to obtain a separate license, but requires the locations to be listed on the license of the parent agency and each to pay a licensing fee in the amount prescribed. Requires any person, political subdivision of the state, or other governmental agency desiring a hospice license to file with CDPH a verified application. (Health & Saf. Code §1748)
- 2) Prohibits CDPH from issuing a new license to operate a hospice, notwithstanding any other law and except as provided in 3) below, on and after January 1, 2022, and until 365 days from the date that the California State Auditor publishes a report on hospice licensure. (Health & Saf. Code §1751.70)
- 3) Permits CDPH to grant an exception to the moratorium in 2) above upon making a written finding that an applicant for a new license, or, with a license application pending on January 1, 2022, has shown a demonstrable need for hospice services in the area where the applicant proposes to operate based on the concentration of all existing hospice services in that area, and requires CDPH to issue a new license during the moratorium pursuant to the law, as specified. (Health & Saf. Code §1751.75)
- 4) Provides, pursuant to the California Constitution, that the people have the right of access to information concerning the conduct of the people's business, and, therefore, the meetings of public bodies and the writings of public officials and agencies are required to be open to public scrutiny. (Cal. Const. art. I, § 3 (b)(1).)
 - a) Requires a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).)
- 5) Governs the disclosure of information collected and maintained by public agencies pursuant to the California Public Records Act (CPRA). (Gov. Code §§ 6250 et seq.)
 - a) Provides that all public records are accessible to the public upon request, unless the record requested is exempt from public disclosure. (Gov. Code § 6253.)
 - b) Defines "public records" as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any

- state or local agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)
- c) Defines “public agency” as any state or local agency. (Gov. Code § 6252(d).) Recodifies the CPRA in Division 10 of Title 1 (§§ 7920.000 - 7931.000) of the Government Code effective January 1, 2023.

This bill:

- 1) Prohibits a person, political subdivision of the state, or other governmental agency that has been issued a license to establish a hospice, from selling or trading a license to another person, political subdivision of the state, or other governmental agency within five years of issuance. Permits only the person, political subdivision of the state, or other governmental agency initially issued a license for the purposes of establishing a hospice, to use that license during the five-year period.
- 2) Requires an application for hospice, if the applicant has not previously qualified for a hospice license, to demonstrate and provide evidence of an unmet need of hospice services in the geographic region a hospice would serve.
- 3) Requires, by January 1, 2024, CDPH to adopt emergency regulations to implement the recommendations in the California State Auditor Report 2021-123 on the California Hospice Licensure and Oversight (dated March 29, 2022), and maintain the general moratorium on new hospice licenses until the regulations are adopted, but in no event later than March 29, 2024, as specified.
- 4) Authorizes any person may request an investigation of an accredited hospice by making a complaint to CDPH, orally or in writing, alleging a violation of various laws or regulations, and requires the DPH to make a preliminary review, as provided.
 - a) Requires the substance of the complaint to be provided to the licensee.
 - b) Prohibits the substance of the complaint provided to the licensee or any copy of the complaint or any record published, released, or otherwise made available to the licensee from disclosing the name of any person mentioned in the complaint, unless the complainant specifically requests otherwise.
 - c) Provides that the name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection is allowed to be disclosed to the licensee.

COMMENTS

1. Stated need for the bill

The author writes:

Hospice care is intended to make terminally ill patients as physically and emotionally comfortable as possible, and to support their families and other caregivers throughout the process. Instead, fraudulent actors have used hospice to prey on vulnerable individuals and their families. Draining funds meant for sick Californians is abhorrent and we must address this crisis. AB 2673 will reduce the negligence and fraud that targets the terminally ill by codifying recommendations made by the California State Auditor.

2. California State Auditor Report finds indicators of fraud and failure of state agencies to adequately prevent fraud and protect patients

On March 29, 2022, the California State Auditor released a report titled California Hospice Licensure and Oversight, which found multiple indicators of fraud and abuse and that state agencies responsible for overseeing hospice care in California have failed to take adequate measures to prevent such fraud or to protect patients from unqualified and unscrupulous providers. This bill seeks to enact various recommendations from that report including, among others:

- moderating the economic value of a hospice license by banning sale or resale within five years of issuance;
- providing evidence of a need to serve hospice patients in a geographic region;
- requiring ongoing surveys to ensure quality of care standards are being met;
- expanding opportunities for surveys resulting from individual complaints; and
- denying an application for license or suspending or revoking an existing license for improperly certifying a patient is eligible for hospice.

3. Limitation on access to public records

The bill provides that any person may request an investigation of an accredited hospice by making a complaint to CDPH, orally or in writing, alleging a violation of various laws or regulations. The substance of the complaint is required to be provided to the licensee. The bill prohibits the substance of the complaint provided to the licensee or any copy of the complaint or any record published, released, or otherwise made available to the licensee from disclosing the name of any person mentioned in the complaint, unless the complainant specifically requests otherwise. The name of any duly authorized officer, employee, or agent of the department conducting the investigation or inspection is allowed to be disclosed to the licensee.

Access to information concerning the conduct of the people's business is a fundamental and necessary right of every person in this state. (Gov. Cod § 6250.) In 2004, the right of public access was enshrined in the California Constitution with the passage of Proposition 59 (Nov. 3, 2004, statewide gen. elec.),¹ which amended the California Constitution to specifically protect the right of the public to access and obtain government records: "The people have the right of access to information concerning the conduct of the people's business, and therefore . . . the writings of public officials and agencies shall be open to public scrutiny." (Cal. Const., art. I, sec. 3 (b)(1).) Additionally, it required a statute that limits the public's right of access to be adopted with findings demonstrating the interest protected by the limitation and the need for protecting that interest. (Cal. const. art. I, § 3(b)(1).) A public record is defined as any writing containing information relating to the conduct of the public's business prepared, owned, used, or retained by any public agency regardless of physical form or characteristics. (Gov. Code § 6252(e).)

This bill limits the access to public records by prohibiting the disclosure of the name of any person in a complaint or any record published, released, or otherwise made available to the licensee. The findings in the bill claim this limitation is needed in order to protect individual privacy and encourage the identification of violations of requirements applicable to accredited hospices. In light of the important privacy issues being protected and the goal of encouraging complaints to be made to identify violations of the law, this limitation seems warranted.

4. Statements in support

The California Hospice and Palliative Care Association writes in support, but also highlights some concerns:

This important measure would extend and clarify the statewide moratorium on new hospice licenses imposed by SB 664 (Allen) of 2021. Given the proliferation of hospice expansion in areas of the state where fraud appears to be highly concentrated, we are especially pleased that Assembly Member Irwin has brought this measure forward. CAHSAH is committed to ensuring that fraudulent entities are identified and penalized for such negligence and blatant abuse of the hospice benefit.

While we are supportive of the important intent of this measure, our members have raised some concerns regarding how the time and distance requirements will be implemented as well as how to ensure nursing ratios do not impact the continuum of hospice care. The Medicare Hospice Benefit is specifically designed with reimbursement that is **not** linked to distance traveled. There is concern

¹ Prop. 59 was placed on the ballot by a unanimous vote of both houses of the Legislature. (SCA 1 (Burton, Ch. 1, Stats. 2004).

about how patients who are already being cared for by a hospice agency will be impacted if that agency is deemed not to be in a newly specified geographic area. Many factors must be considered when establishing time and distance requirements such as the acuity of the hospice patient. We look forward to working with the Department of Public Health on the implementation of this important measure.

SUPPORT

California Association for Health Services At Home
California Hospice and Palliative Care Association
Sharp HealthCare

OPPOSITION

None known

RELATED LEGISLATION

Pending Legislation: None known.

Prior Legislation:

AB 1280 (Irwin, Ch. 478, Stats. 2021) prohibited a hospice referral source from receiving, directly or indirectly, any form of payment in exchange for referring a patient to hospice provider or facility. Requires a hospice to provide verbal and written notice of the patient's rights and responsibilities in a language and manner the person understands, before providing care.

SB 664 (Allen, Ch. 494, Stats. 2021) imposed a moratorium on new hospice licenses until one year from the date that the California State Auditor publishes a report on hospice licensure.

PRIOR VOTES:

Senate Health Committee (Ayes 9, Noes 0)

Assembly Floor (Ayes 72, Noes 0)

Assembly Appropriations Committee (Ayes 16, Noes 0)

Assembly Health Committee (Ayes 14, Noes 0)
